IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4363 OF 2000

Vidyamandir High School and anr. ... Petitioners

Versus

Jitesh Kisan Koli & Ors. ... Respondents

Mr. S.S. Patwardhan for Petitioner.

Mr. Mahesh M. Thorat for Respondents.

WITH

WRIT PETITION NO. 4541 OF 2001

Shri. Jitesh Kisan Koli ... Petitioner

Versus

Vidya Mandir High School
and Ors. ... Respondents

Mr. Nitin Jamdar for Petitioner.

Mr. D.A. Patil, A.G.P. for Respondent Nos. 3 and 4.

Mr. S.S. Patwardhan for Respondent No.2.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 19, 2005

P.C.

. Rule in both the Petitions.

. Heard forthwith.

. Writ Petition No. 4363 of 2000 is filed

challenging the order dated 7.4.2000 passed by the School tribunal. The appeal filed by the petitioner herein was against the order of termination dated 10.8.1991. The Tribunal by its order set aside the order of termination and the respondents before the tribunal were directed to reinstate the Petitioner. This order has been impugned by the Management by the present petition.

. Writ Petition No. 4541 of 2000 came to be filed by the teacher. That petition was pursuant to order of the committee for scrutiny and verification of the tribe claim dated 28.4.2001 rejecting the petitioners claim as belonging to Mahadeo Koli scheduled tribe.

. We will first the consider the challenge in Writ petition No. 4541 of 2000. The learned counsel on behalf of the Petitioner contends that the order of the committee is liable to be set aside as the application was referred to the committee when the committee had no jurisdiction as there was neither any Act nor any G.R. conferring the power on the committee to decide caste status of a teacher of a

private aided institution. The learned counsel relies on the judgment in the case of Sudhakar Shankar Gawli Versus State of Maharashtra and Ors. 1998 (2) Mh.L.J. 97. The learned Division Bench of this court was answering the limited issue as to whether the committee had jurisdiction to decide the claim of the employees belonging to the State Road Transport Corporation. The Court held that the Committee had no jurisdiction.

. The issue of verification of caste claim stands decided by the Apex Court in the case of Madhuri Patil and pursuant to that, the State Governments were called upon to constitute a committee. That decision of the committee is final. Subsequent thereto the State of Maharashtra has enacted an Act by which various committees have been set up. The question is whether merely because at the relevant time there was no Act or G.R. conferring power on the committee to decide the application of persons like teachers as urged by the petitioner, the decision of the committee can be said to be without jurisdiction. In the instant case as pointed out earlier, the observation in the judgement in

Madhuri Patil, was not brought to the attention of the learned Division Bench which was deciding the issue in Sudhakar (supra).

. Both the parties went before the committee which was constituted as set out earlier pursuant to the directives of the Apex Court in Madhuri Patil's case. Both the parties did not raise objection to the committee deciding the the caste validity of the Petitioner. In these circumstances, it will not be possible for this court to entertain the said plea after both the parties had gone before the Committee and called on the Committee to answer the issue which the committee has done.

. We then come to the merits of the matter. The Committee pursuant to the home enquiry report found that the caste of the Petitioners' father was recorded as Hindu Koli. This was a document previous to the Presidential notification and was of the highest probative value. Similarly the document of Petitioners' cousin's grandfather also shows caste as Koli. As is settled, the person acquires his caste from his father and as such,

once a document was on record, the committee rightly rejected the claim of the Petitioner as belonging to Hindu Mahadeo Koli. The order of the tribunal therefore, does not suffer from any error apparent on the fact of record and consequently is not liable tobe interfered with.

. We then come to the issue in Writ Petition filed by the Management. Once the Petitioner is held not entitled to claim as belonging to Scheduled tribe on account of these subsequent events, no relief can be granted by this court even if the order of the School Tribunal is upheld. As such we are not deciding the issue which arises in Writ Petition No. 4363 of 2000.

. It is however, contended on behalf of the teacher that he has been serving for a long period. There were Government circular protecting him as caste Koli has subsequently been notified as special backward community. It is for the Petitioner to represent to the Management and for the Management to consider the same according to Law.

. In the light of that rule made absolute in 4363 of 2000.

. Rule discharged in 4501 of 2001 with observations as aforestated. No order as to costs.

. The Petitioners services not to be terminated for a period of three months from today. In the meantime, the teacher to make representation which will be disposed of by the Management within the period of two months from today.

(F.I. REBELLO,J.)